IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1414 OF 2004

Shri Patilbuva Rama Nighot & Ors. : Petitioners

V/s.

Smt.Bhamabai Bajaba Nighot & Ors. : Respondents

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Mr.Kishor S. Patil for the petitioners.

Ms V. Mhaispurkar, Asstt. Govt. Pleader, for the respondent no.6.

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CORAM : S.A. BOBDE, J.

August 29, 2005.

P.C.:

1. Rule, returnable forthwith.

Ms Mhaispurkar, learned Asstt. Govt. Pleader for the respondent no.6, appears and waives service of rule.

Heard by consent.

2. Notice for final disposal was issued by this Court on 21.6.2005. Though served, none appears for the respondent nos.1 to 4.

3. The petitioners have challenged the order of the revisional authority i.e. the Minister by which the two orders passed in the execution proceedings of a partition suit has been set aside. The impugned order is dated

13.11.2003. The suit for partition was decreed in favour of the petitioners. The decree was sent for execution. By an order dated 3.6.1997, the S.D.O. directed that survey nos.91/9 and 92/11 be handed over to the petitioners.

4. The respondent nos.1 to 4 filed R.T.S. appeal no.13/1997 before the Addl. Collector, Pune, who dismissed their appeal. Aggrieved thereby, the said respondents preferred a revision before the Addl. Commissioner, Pune, under section 257 of the Maharashtra Land Revenue Code. The Addl. Commissioner dismissed the revision application on 8.10.1999.

5. Thereafter, the said respondents preferred another revision application before the Minister in the Department of Revenue under section 257 of the Maharashtra Land Revenue Code. The learned Minister has set aside the order of the authorities below.

6. Mr.Patil, the learned counsel for the petitioners, has pointed out that the order of the learned Minister is completely erroneous in that it is observed that the land was included to the petitioners' share on the ground that this was done without giving an opportunity to the respondents and, therefore, the partition as ordered by

the authorities below is liable to be set aside. The contention of the learned counsel appears to be correct, in view of the order passed by the Addl. Collector, Pune, which itself shows vide para 6 that the Tahsildar, Ambegaon, had issued notices to all interested persons in the partition suit. The Tahsildar had also given an opportunity to all those who are interested before sanctioning watap patrak i.e. table of partition which is not proportionate to the share of both parties. It is on this ground that the Addl. Commissioner, Pune, had confirmed the order of the S.D.O. in execution. Having regard to the above position, it is clear that the revisional authority was misled into observing that the lands were included in the share of the respondents without hearing them.

7. The impugned order is, therefore, set aside. The matter is remanded back to the revisional authority for a fresh decision, in accordance with law. The authorities are directed to effect partition in accordance with the watap patrak prepared by the Taluka Inspector of Land Records, who is directed to give a fresh notice to all the parties. Having regard to the fact that the litigation is pending since 1976, the authorities are directed to complete the partition as expeditiously as possible and, in any case, not later than six months from today.

S.A. BOBDE, J.